

name and for its own benefit. Procedural defenses, such as a failure of the injured person to properly file and/or serve a complaint on the third party, that may prevent the injured person from recovering, do not prevent the United States from pursuing its own action to recover the value of medical treatment provided to the injured person. The right arises directly from the statute; the statutory reference to subrogation pertain only to one mode of enforcement. In creating an independent right in the Government, the Act prevents a release given by the injured person to a third party from affecting the Government's claim.

(c) *Liable parties.* MCRA claims may be asserted against individuals, corporations, associations and non-Federal Government agencies subject to the limitations described in § 757.15.

(d) *Reasonable value of medical care.* The reasonable value of medical care provided to an injured person is determined:

(1) By using the rates set by the Office of Management and Budget and published in the FEDERAL REGISTER for care provided in Federal medical care facilities; or

(2) By the actual amount paid by the Federal Government to non-Federal medical care providers.

(e) *Alternate Theories of Recovery.* Often, recovery under the MCRA is not possible because no third-party tort liability exists. For example, if a member, retiree, or dependent is driving a vehicle and is injured in a single-car accident, there is no tortfeasor. State law, including insurance, workers' compensation, and uninsured motorist coverage provisions, determines the DON's right to recover in situations not covered by the MCRA. If, under the law where the injury occurred, the injured party is entitled to compensation for medical care received, usually the Federal Government may recover. The two most common alternate theories are described below.

(1) Recovery may be possible under the injured party's automobile insurance policy. In most cases, the Federal Government should seek recovery as a third-party beneficiary under the medical payments or the underinsured/uninsured portion of the injured party's

policy. The ability of the Federal Government to recover as a third-party beneficiary has been upheld in some states, while other states have taken the contrary position.

(2) Recovery may also be possible under State workers' compensation laws. Case law in this area is still emerging, but in most jurisdictions, the United States stands in the position of a lien claimant for services rendered.

§ 757.15 Claims not asserted.

In some cases, the MCRA or public policy considerations limit the DON's assertion of claims against apparent third-party tortfeasors. MCRA claims are not asserted against:

(a) *Federal Government agencies.* Claims are not asserted against any department, agency or instrumentality of the United States. "Agency or instrumentality" includes self-insured, non-appropriated-fund activities but does not include private associations.

(b) *Injured servicemembers, dependents and employers of the United States.* Claims are not asserted directly against a servicemember, the dependent of a servicemember, or an employee of the United States who is injured as a result of his willful or negligent acts. The United States does assert, however, against medical care and treatment insurance coverage the member, employee, or dependent might have.

(c) *Employers of merchant seamen.* Claims are not asserted against the employer of a merchant seaman who receives Federal medical care under 42 U.S.C. 249.

(d) *Department of Veterans Affairs care for service-connected disability.* Claims are not asserted for care provided to a veteran by the Department of Veterans Affairs when the care is for a service-connected disability. The United States will, however, claim for the reasonable value of care provided an individual before he is transferred to a Department of Veterans Affairs hospital.

§ 757.16 Claims asserted only with JAG approval.

The responsible NLSC activity or USSSO will investigate potential MCRA claims against the following